

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
DELTA DIVISION**

**TUNICA WEB ADVERTISING, INC. AND  
CHERRY L. GRAZIOSI,**

**PLAINTIFFS,**

**VS.**

**CIVIL ACTION NO. 2:03CV234-P-A**

**TUNICA COUNTY TOURISM  
CORPORATION, ET AL.,**

**DEFENDANTS.**

**ORDER**

This matter comes before the court upon Plaintiffs' Motion for Summary Judgment on Defendants' Counterclaims, or in the Alternative, for Separate Trial [295-1]. Upon due consideration of the motion and the responses filed thereto, the court finds as follows, to-wit:

It is undisputed that whether the plaintiffs' use of the casino defendants' trademarks is likely to cause confusion is a question of fact in the Fifth Circuit. *Society of Fin. Examiners v. National Assoc. of Certified Fraud Examiners, Inc.*, 41 F.3d 223, 225 (5<sup>th</sup> Cir. 1995). As such, summary judgment must be denied with regard to the casino defendants' trademark infringement counterclaims. Furthermore, it appears that all of the casino defendants' remaining counterclaims relate to the finding of trademark infringement. Thus, the court concludes that the motion for summary judgment should be denied completely because the plaintiffs have not shown that there is a complete absence of a material issue of fact that does not necessitate a trial.

Given the overlapping relationship between the evidence relating to the plaintiffs' claims and that of the casino defendants' counterclaims, the court concludes that separate trials under Fed. R. Civ. P. 42(b) is inappropriate since it is more efficient and in the interests of justice to resolve all of the claims in one trial.

**IT IS THEREFORE ORDERED AND ADJUDGED** that Plaintiffs' Motion for Summary Judgment on Defendants' Counterclaims, or in the Alternative, for Separate Trial [295-1] is hereby **DENIED**.

**SO ORDERED** this the 2d day of December, A.D., 2005.

/s/ W. Allen Pepper, Jr.  
W. ALLEN PEPPER, JR.  
UNITED STATES DISTRICT JUDGE